

# Toll Brothers

America's Luxury Home Builder®

JOHN F. LEHANE  
VICE PRESIDENT, NATIONAL DIRECTOR OF STORM WATER COMPLIANCE

Direct Dial: (215) 293-5438  
Fax: (215) 938-8422

March 8, 2016

Kelly Gable, Esq.  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
Mail Code 3RC20  
1650 Arch Street  
Philadelphia, PA 19103-2029

Re: Demand for Stipulated Penalties  
*United States, et al. v. Toll Brothers, Inc., et al.*  
Docket No. 12-cv-3489-MSG (E.D. Pa. 2012)

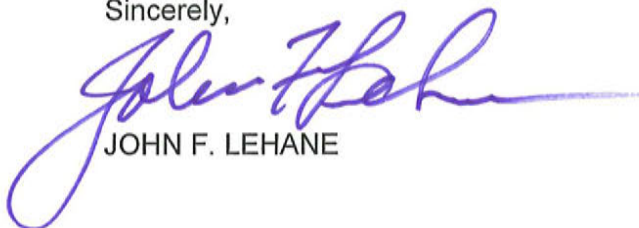
Dear Ms. Gable:

In connection with the June 18, 2013 Consent Decree between the United States of America, et al. and Toll Brothers, Inc., enclosed please find:

1. EPA demand for stipulated penalties letter dated February 17, 2016 for \$6,500;
2. Stipulated Penalty Table;
3. Email correspondences between Kelly Gable and John Lehane revising the calculated penalty to \$4,500; and
4. EFT authorization form confirming the payment in the amount of \$4,500.

Please contact me if you have any questions.

Sincerely,



JOHN F. LEHANE

Enclosures  
JFL:hms

Recipient List

John K. McDonald  
Sr. Vice President and General Counsel

Timothy J. Hoban  
Vice President and Counsel

Nancy Flickinger  
U.S. Department of Justice

Principal Counsel  
Office of the Attorney General  
Maryland Department of the Environment

Chief  
Enforcement Division, Compliance Program  
Water Management Administration  
Maryland Department of the Environment

Director  
Department of Conservation and Recreation  
Commonwealth of Virginia

Assistant Attorney General and Chief  
Environmental Section  
Commonwealth of Virginia  
Office of the Attorney General

Richard Schwartz  
Crowell & Moring LLP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. John Lehane  
Vice President, National Director of Storm Water Compliance  
Toll Brothers, Inc.  
250 Gibraltar Road  
Horsham, PA 19044

FEB 17 2016

Rec'd 19 Feb 2016

Re: Demand for Stipulated Penalties  
*United States, et al. v. Toll Brothers, Inc., et al.*  
Docket No. 12-cv-3489-MSG (E.D. Pa. 2012)

Dear Mr. Lehane:

Pursuant to Section VII of the above-referenced Consent Decree, the U.S. Environmental Protection Agency ("EPA") is issuing a demand for stipulated penalties to Toll Brothers, Inc. et al. (Toll) for violations of the Decree documented in Toll's 2015 National Compliance Summary Report submitted to EPA on September 28, 2015. This letter is to demand payment to the United States of stipulated penalties in the amount of \$6,500 for those violations, pursuant to Section VII of the subject Consent Decree. The enclosed Attachment 1 provides details about the calculation of this stipulated penalty demand.

Pursuant to Paragraph 32.b of the Consent Decree, stipulated penalties are due and payable within thirty (30) days of Toll's receipt from EPA of a demand for payment of the penalties, unless Toll invokes the procedures under Section IX thereof (Dispute Resolution). Pursuant to Paragraph 32.c of the Decree, the entire stipulated penalty amount is payable in full to the Federal Plaintiff.

If you have any questions regarding this demand for stipulated penalties, please contact Kelly Gable, Esq., at 215-814-2471.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon M. Capacasa", is written over a circular blue ink stamp.

Jon M. Capacasa, Director  
Water Protection Division

cc: Nancy Flickinger, Esq.  
U.S. Department of Justice  
P.O. Box 7611  
U.S. Department of Justice  
Washington, DC 20044-7611

Richard Schwartz, Esq.  
Crowell & Moring LLP  
1001 Pennsylvania Ave., NW  
Washington, DC 20004

Principal Counsel  
Office of the Attorney General  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD 21230

Chief  
Enforcement Division, Compliance Program  
Water Management Administration  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD 21230

Director  
Department of Conservation and Recreation  
Commonwealth of Virginia  
203 Governor Street, Suite 302  
Richmond, VA 23219

David C. Grandis  
Environmental Section  
Commonwealth of Virginia  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219

**Toll Brothers, Inc.**  
**Stipulated Penalty Table**  
**Based on National Compliance Summary Report for 2015**

Applicable Stipulated Penalty Provision from Consent Decree	Reported Violations	Stipulated Penalty Amount from Consent Decree						Calculated Stipulated Penalty Amount
		Percentage of Inspections Missed/Undocumented Per National Reporting Period	1 & 2 QRP	3 & 4 QRP	5 <sup>th</sup> - 8 <sup>th</sup> QRP	9 <sup>th</sup> - 12 <sup>th</sup> QRP		
1. Failure to perform or, if performed, a material failure to document, a Site Inspection as required by Paragraph 13 (Inspections). Para. 30.c.	374 missed 22,143 carried out 1.69% missed	0.01 to 5%	0	0	0	0		
		5.01 to 8%	\$1,000	\$2,500	\$10,000	\$15,000	\$0	
		8.01 to 12%	\$3,000	\$6,750	\$25,000	\$30,000		
		12.01 to 20%	\$6,000	\$12,500	\$50,000	\$100,000		
		20.01 to 25%	\$10,000	\$25,000	\$100,000	\$200,000		
		>25%	\$30,000	\$62,500	\$250,000	\$500,000		
2. Failure to perform or, if performed, a material failure to document a Quarterly Compliance Inspection or Review as required by Paragraph 15.d, 15.e, or 15.f (Site Storm Water Compliance Review and Oversight). Para. 30.d.	1 RQCI of 466 1 RQCR of 466 0 SQCI 211 0 SQCR of 211  Total 2 missed of 1354 (0.15%)	Percentage of Quarterly Inspections or Reviews Undocumented Per National Reporting Period			Stipulated Penalty			
		For each undocumented Inspection or review from 0.01 to 5% of required inspections or reviews:			\$200			
		For each additional undocumented Inspection or review from 5.01 to 10% of required inspections or reviews:			\$400			
		For each additional undocumented Inspection or review > 10% of required inspections or reviews:			\$600			

Applicable Stipulated Penalty Provision from Consent Decree	Reported Violations	Stipulated Penalty Amount from Consent Decree	Calculated Stipulated Penalty Amount
3. Failure to perform or, if performed, a material failure to document a make-up Quarterly Compliance Inspection and/or Review, as required by Paragraph 15.h (Site Storm Water Compliance Review and Oversight). Para. 30.e.	2, but one occurrence	\$2,000	<del>\$4,000</del> \$2,000
4. Failure to have trained and certified Site Storm Water Compliance Representatives as required by Paragraph 18.a(ii) and (iii) at the time of an inspection required by Paragraph 15 (Site Stormwater Compliance Review and Oversight). Para. 30.i.	5	\$ 100 per person	\$500
5. Failure of any Site Storm Water Compliance Representative to complete the semi-annual training course as required by Paragraph 18.a(v). Para. 30.j.	8	\$ 100 per person	\$800
6. Failure of any Division Storm Water Compliance Representative to complete the semi-annual training course as required by Paragraph 18.a(v). Para. 30.j.	8	\$ 100 per person	\$800
Stipulated Penalty due to United States Total Stipulated Penalty Demand for Reported Violations			<del>\$4,500</del> <del>\$6,500</del> <del>\$6,500</del> \$4,500

## John Lehane

---

**From:** Gable, Kelly <Gable.Kelly@epa.gov>  
**Sent:** Thursday, March 03, 2016 2:49 PM  
**To:** John Lehane  
**Cc:** Tim Hoban; Richard Schwartz; Michelle Simon; Flickinger, Nancy (ENRD); Dinsmore, Andrew; Bruce, Susan  
**Subject:** RE: EPA's Demand for Stipulated Penalties from Toll Brothers

John,

Yes, there was some confusion regarding the item you identified. I have consulted with the others here, and we agree that the stipulated penalties should be \$4,500. I apologize for the confusion and any inconvenience. Feel free to call or email with any other questions or issues.

Very truly yours,  
Kelly

Kelly A. Gable  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 3  
1650 Arch Street (3RC20)  
Philadelphia, PA 19103  
Phone: 215-814-2471  
Email: [gable.kelly@epa.gov](mailto:gable.kelly@epa.gov)

-----  
This message and any attachments may contain confidential or privileged information and are only for the use of the intended recipient of this message. If you are not the intended recipient, please notify the sender by return email, and delete or destroy this and all electronic and hard copies of this message and all attachments. Any unauthorized disclosure, use, distribution, or reproduction of this message or any attachments is prohibited and may be unlawful.  
-----

**From:** John Lehane [<mailto:JLEHANE@eseeng.com>]  
**Sent:** Monday, February 22, 2016 10:32 AM  
**To:** Gable, Kelly <[Gable.Kelly@epa.gov](mailto:Gable.Kelly@epa.gov)>  
**Cc:** Tim Hoban <[THOBAN@tollbrothersinc.com](mailto:THOBAN@tollbrothersinc.com)>; Richard Schwartz <[rschwartz@crowell.com](mailto:rschwartz@crowell.com)>; Michelle Simon <[msimon@tollbrothersinc.com](mailto:msimon@tollbrothersinc.com)>  
**Subject:** EPA's Demand for Stipulated Penalties from Toll Brothers

Kelly,

Last Friday we received EPA's Demand for \$6,500 in Stipulated Penalties based on Toll Brothers' 2015 National Compliance Summary Report (NCSR). I believe that the stipulated penalties should be \$4,500, not \$6,500, and that EPA may have miscalculated.

In the Stipulated Penalty Table provided in EPA's correspondence, EPA calculated two reported violations in Item 3 in the column titled "Applicable Stipulated Penalty Provision from Consent Decree" for failure to perform or document a make-up Quarterly Compliance Inspection and/or Review. This penalty arises out of Paragraph 30.e of the Consent Decree, which provides: "Upon missing a Quarterly Compliance Inspection and/or Review, Builder's failure to perform or, if performed, a material failure to document a make-up Quarterly Compliance Inspection and/or Review, as required by Paragraph 15.h (Site Storm Water Compliance Review and Oversight), shall result in a stipulated penalty of \$2,000." I read this paragraph as imposing a single stipulated penalty for any instance where Toll (1) misses an inspection or a review, or (2) misses an inspection and a review. The latter is what occurred here.

In the NCSR, we reported two failures to perform or document a Quarterly Compliance Inspection or Review, but these two failures arose out of a single instance of a missed make-up Quarterly Compliance Inspection and a missed make-up Quarterly Compliance Review. We explained this in the NCRS. This missed Quarterly Compliance Inspection and missed Review is a single occurrence, not two. This should result in a single stipulated penalty of \$2,000, not two penalties.

Please let me know as soon as possible whether you agree with the above. If possible, we'd like to avoid any unnecessary recourse to the alternative dispute procedures in the decree.

Thank you.

**John F. Lehane, PE, CPESC, CPSWQ, CESSWI**

Vice President, National Director of Storm Water Compliance

Toll Brothers

250 Gibraltar Road

Suite 2E

Horsham, PA 19044

p: 215-293-5438

f: 215-293-5491

m: 267-238-7745

e: [jlehane@tollbrothersinc.com](mailto:jlehane@tollbrothersinc.com)



Custom  
03/07/2016 05:49 PM ET

(b) (4)(b) (4)

Commercial Electronic Office®

**TOLL BROTHERS INC**

Wire Transfer Detail Report  
As of 03/07/2016

Treasury Information Reporting

Note: Intraday information subject to change

Currency:USD

(b) (4)(b) (4)

WELLS FARGO BANK, N.A.  
TOLL BROS INC

Debit Wire Amount	Process Date Time	To:	Corresponding Bank:	Status
4,500.00	03/07/2016 01:05 PM CT	FEDWIRE N/A US DEPARTMENT OF JUSTICE 15030001	N/A	COMPLETE

Wire Service Reference Number:

(b) (4)(b) (4)

Wells Message Number:

(b) (4)(b) (4)

PC Reference/Confirmation Number:

(b) (4)(b) (4)

Value Date:

03/07/2016

Wire Type:

495

Wire Amount:

4,500.00

Transaction Reference Number:

(b) (4)

USD Equivalent Amount:

4,500.00

Originator ID:

N/A

Originator Name and Address:

Toll Bros., Inc

250 Gibraltar Road

Horsham PA 19044 US

Instructing Bank Code/ID:

N/A

Instructing Bank Name and Address:

N/A

Sending Party ID:

(b) (4)(b) (4)

Sending Party Name and Address:

TOLL BROS INC

FUNDING ACCOUNT

250 GIBRALTAR ROAD

HORSHAM, PA 19044

Bank to Bank Info:

N/A

Beneficiary Bank Code/ID:

N/A

Beneficiary Bank Name and Address:

N/A

Originator to Beneficiary Info:

TOLL BROTHERS INC DOJ CASE 90 5 1 1

09301 CASE 2 12 CV 3489 MSGCOLLECTI

ON OFFICE USAO PAE CDCSNO 2013A5927

5 EFT PAE16E010

Text:

Instructed Currency/Amount:

USD/4,500.00

Exchange Rate:

1.000000

Fed/CHIPS/SWIFT Reference Number:

(b) (4)(b) (4)(b) (4)

Completed Timestamp:

03/07/2016 01:05 PM CT

Sender Reference Number:

(b) (4)(b) (4)

Originating Bank Code/ID:

N/A

Originating Bank Name and Address:

N/A

Receiving Party ID:

(b) (4)

Receiving Party Name and Address:

TREAS NYC/FUNDS TRANSFER DIVISION

NEW YORK NY

Intermediary Bank Code/ID:

N/A

Intermediary Bank Name and Address:

N/A

Beneficiary Code/ID:

N/A

Beneficiary Reference ID:

(b) (4)

Beneficiary Name and Address:

US DEPARTMENT OF JUSTICE

US

(b) (4)(b) (4)(b) (4)(b) (4)

---

-4,500.00 Account Net Total

-4,500.00 Net Total For Bank (b) (4)(b) (4)

-4,500.00 Net Grand Total For Currency (USD)

---- END OF REPORT ----